

1 CASE NO.: CR-FP-11-0300

2 DEPT. NO.: II

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IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

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10 THE STATE OF NEVADA,
11 Plaintiff,

THE STATE OF NEVADA'S:

1. NOTICE PURSUANT TO THE
PROVISIONS OF SUPREME COURT
RULE 250 OF THE STATE'S INTENT, IN
THE EVENT THAT THE DEFENDANT
TONI COLLETTE FRATTO IS
CONVICTED OF FIRST DEGREE
MURDER, TO SEEK THE IMPOSITION
OF THE PENALTY OF DEATH; AND

12 vs.

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TONI COLLETTE FRATTO,
18 Defendant.

2. CERTIFICATE OF SERVICE WITH
RESPECT THERETO

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Notice

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COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-

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entitled cause, by and through its Counsel Of Record, the Elko County District

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Attorney's Office, and by this pleading would place the Defendant, Toni Collette

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Fratto, on notice that in the event that she is convicted in the above-entitled cause of

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the offense of Murder In The First Degree, A Category A Felony As Defined By NRS

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200.030, under any theory of that offense pleaded against her in the Second Criminal

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Affirmation Pursuant to NRS 239B.030 Page 1 of 22
SSN Does Appear
SSN Does Not Appear KC

1 Information filed in the above-entitled cause on the 28th day of July, 2011, that it is the
 2 State's intent to seek the imposition of the penalty of death under the provisions of
 3 NRS 200.030.4(a) and NRS 200.033.
 4

5 **Specification Of The Aggravating Circumstance(s)**
 6 **Upon Which The State Intends To Rely**

7 In the event that the Defendant Toni Collette Fratto is convicted of the
 8 offense of First Degree Murder in the above-entitled cause, the aggravating
 9 circumstance which the State intends to rely upon is that specified in NRS
 10 200.033.4(a) which provides in pertinent part that:
 11

12 The only circumstances by which murder of the first degree may be
 13 aggravated are:

14 ... 4. The murder was committed while the person was engaged, alone
 15 or with others, in the commission of, or an attempt to commit or flight
 16 after committing or attempting to commit ... kidnapping in the first degree,
 17 and the person charged:

18 (a) Killed or attempted to kill the person murdered; or

19 (b) Knew or had reason to know that life would be taken or lethal force
 20 used.

21 **Recitation Of The Factual**
 22 **Basis For This Notice**

23 The State, in accordance with the Supreme Court Rule 250.4(c),
 24 would recite the following facts – i.e. testimony and evidence developed during
 25 the investigation of the events which have given rise to the prosecution of Toni
 26 Collette Fratto and/or the litigation of the Preliminary Hearing upon which the
 27 State would be relying to support the imposition of the penalty of death:
 28

1 1. The Testimony Of Celia Costanzo:

2 That:

3
4 a. She was familiar with Kody Cree Patten, and that Micaela Costanzo
5 (hereinafter simply "Micaela"), the Decedent named in the Second Criminal
6 Information filed against Toni Collette Fratto on the 28th day of July, 2011,
7 Ms. Celia Costanzo's sixteen (16) years old daughter, and Kody Cree
8 Patten had been friends when they were children up until approximately a
9 year and a half or two years prior to Micaela's death, because she had,
10 from approximately 2002, lived in the same apartment complex where
11 Kody Cree Patten and his parents, who managed the apartment complex,
12 lived until the Pattens moved from the apartment complex where she had
13 been living in which occurred approximately a year prior to Micaela's
14 death.
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18 b. As of Thursday, the 3rd day of March, 2011, Micaela was a student at the
19 West Wendover, Nevada Junior/Senior High School (hereinafter simply
20 the "School"), and was participating in the extracurricular activity of Track
21 at the School.
22

23 1. That on Thursday the 3rd day of March, 2011, it was Celia
24 Costanzo's expectation that Micaela would walk home from the
25 School after Track practice; and
26

27 2. Celia Costanzo had previously made an appointment for Micaela
28

to see a personal trainer at 8:00 o'clock p.m. that night.

3. That at approximately 6:00 o'clock p.m. Mountain Standard Time¹, which is the time used by the residents of West Wendover, Nevada, Celia Costanzo commenced looking for Micaela when she could not contact her by telephone or otherwise; she was unable to make contact with her or locate Micaela; and that the 3rd of March, 2011, when she dropped her off at School was the last time Celia Costanzo ever saw Micaela.

c. That when she had taken Micaela to School on the morning of the 3rd of March, 2011, one of the garments that Micaela had been wearing was a grey sweatshirt.

2. The Testimony Of Tyler Peterson And Tiffany Rasmussen:

That:

a. Shortly after Track practice on the afternoon of the 3rd of March, 2011, Micaela, in the company of one Tyler Peterson, the girls' Track coach at the School, and a classmate, Tiffany Rasmussen, were engaged in a conversation at the rear of the School, at which time Tyler Peterson observed Kody Cree Patten, with whom he was familiar, drive up behind the School in a white sport utility vehicle, specifically a Chevrolet Trailblazer, which the State established through testimony of one Wendi

¹ All references to time in the recitation of facts/evidence upon which the State is relying is, unless otherwise noted, to Mountain Standard Time -- the time utilized by the residents of West Wendover, Nevada.

1 Murphy was hers and that she lent the vehicle to Kody Cree Patten on the
2 3rd of March, 2011; Kody Cree Patten parked the vehicle behind the
3 School and went towards the School;
4

- 5 b. Eventually, Tiffany Rasmussen and Micaela ended up in the girls' locker
6 room at the School and Tiffany Rasmussen, at approximately 5:00 p.m.,
7 parted company with Micaela, at which time Micaela was alone in the
8 locker room.
9

10 3. The Testimony Of Wendi Murphy:

11 That:

- 12
13 a. She had lent to Kody Cree Patten during the noon hour on the 3rd of
14 March, 2011, her Chevrolet Trailblazer, the exterior of which was clean
15 when she surrendered it to him; that she expected the Trailblazer to be
16 returned to her at approximately 5:00 o'clock p.m. on the 3rd of
17 March, 2011; that it was returned to her at approximately 8:45 p.m. on the
18 evening of March 3rd, 2011, at the residence of one Kandace
19 Christiansen and Jeff Patten located in Wendover, Utah; and that at the
20 time Kody Cree Patten returned the vehicle, he was accompanied by
21 Toni Collette Fratto;
22
23 b. That the next morning she noticed that the vehicle's exterior was dusty;
24 and
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26 c. That on the morning of the 4th of March, 2011, she observed a package of
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1 metal picture hanging wire which she did not believe had been in her
2 vehicle when she lent it to Kody Cree Patten on the 3rd day of
3 March, 2011.
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5 1. The State, with respect to the issue of the presence of the wire in
6 Wendi Murphy's vehicle on the morning of the 4th of March, 2011,
7 would reserve the right to call Jason Abrams, an Officer with the
8 West Wendover Police Department who observed it in the vehicle
9 on or about the 4th day of March, 2011, and/or Renee Armstrong
10 and/or Victor Ruvalcaba of the Washoe County Crime Laboratory
11 who, the State believes and avers, photographically recorded the
12 wire's presence in the vehicle when it was forensically searched on
13 or about the 6th day of March, 2011; and/or the testimony of Det.
14 Donald Burnum who eventually secured the wire from the vehicle
15 pursuant to a search warrant on the 30th day of June, 2011.
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19 4. The Testimony Of Travis Landon And Jerome Reamer:
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21 That:

- 22 a. The School, as of March 2011, was equipped with a video surveillance
23 system;
24
25 b. That the system captured, and there was preserved, images of Kody
26 Cree Patten leaving the School on March 3rd, 2011, through a door in the
27 rear thereof at *approximately* 5:09 p.m., and, further, captured imagery of
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Micaela leaving the School, alone, on the 3rd of March, 2011, through the same door of the School from which Kody Cree Patten had departed at approximately 5:12 p.m.

5. The Testimony Of Kiaerra Murphy:

That:

- a. At approximately 5:30 p.m. on the 3rd of March, 2011, she observed Kody Cree Patten driving her mother's (Wendi Murphy's) Trailblazer north on a dirt road between Tibbets Boulevard in Wendover, Nevada which is near the School, and West Wendover Boulevard; that she observed the vehicle reach Wendover Boulevard and turn west which would take him out of town.

6. The Testimony Of Michael "Mick" Moore:

That:

- a. On Saturday, the 5th day of March, 2011, Michael "Mick" Moore, was voluntarily participating in a search which had by then been initiated for Micaela;
- b. That he came upon an area some five (5) miles west of the City of West Wendover near some railroad tracks and observed what appeared to him to be some fresh tracks in the area off the dirt road he had been traveling on;
- c. That upon his inspection of the area on foot, he ultimately discovered

- 1 what appeared to him to be freshly turned dirt covered in tumbleweeds
2 and what appeared to him to be blood on the ground in the area; and
3
4 d. He then left to make contact with law enforcement and lead them back
5 to the site he had discovered.

6 7. The Testimony Of Ronald Supp And Det. Donald Burnum:

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8 That:

- 9 a. On the 5th of March, 2011, Ronald Supp, Chief of the West Wendover
10 Nevada Police Department, who as well was participating in the search
11 for Micaela, was contacted by Michael "Mick" Moore who led him
12 back to the site described in Paragraph 6 above;
13
14 b. That, using a shovel, Chief Supp dug approximately two shovels full of
15 dirt from the disturbed area pointed out to him by Mr. Moore which
16 exposed what he perceived to be flesh;
17
18 d. Chief Supp thereafter directed his subordinates, Det. Burnum amongst
19 them, to secure the scene which Det. Burnum proceeded to do with
20 assistance from his colleagues; and
21
22 e. Chief Supp then contacted the Elko County Sheriff's Department to
23 request that they take charge of the investigation as the location of the
24 suspected crime scene was in the County as opposed to the City of West
25 Wendover, Nevada;
26
27 f. Chief Supp was also present on the morning of the 6th of March, 2011,
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1 when representatives of the Washoe County Crime Lab arrived to
2 conduct the excavation of what appeared to be a grave at the site located
3 by Mr. Moore on the 5th day of March, 2011, as described above;

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5 g. That, during the course of the investigation, Det. Burnum recovered a
6 military entrenching tool from underneath the residence of Claude and
7 Cassie Fratto situated in West Wendover, Nevada where Kody Cree
8 Patten had been living as of the 3rd day of March, 2011; and

9
10 h. That on the 18th of March, 2011, Det. Burnum recovered from a gravel pit
11 some three miles northeast of the City of West Wendover, Nevada in the
12 County of Tooele, Utah, what appeared to be, and were later identified by
13 Cella Costanzo, the burned remnants of Micaela's black polka dotted
14 back pack, the remnants of a notebook, a house key belonging to
15 Micaela and a charm in the shape of a panda bear that belonged to
16 Micaela and was attached to her key ring.

17
18 a. He also recovered the burned remnants of a folding knife.
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21 8. The Testimony Of Renee Armstrong
22 (Formerly Thomson) And Victor Ruvalcaba:

23 That:

24 a. On the 6th day of March, 2011, Renee Armstrong and Victor
25 Ruvalcaba, Evidence Technicians from the Washoe County Crime
26 Lab, arrived at the suspected crime scene approximately five miles
27 west of West Wendover, Nevada;
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- 1 b. That the apparent grave site discovered by Mr. Moore on the 5th day of
2 March, 2011, was excavated and found to contain the partially clothed
3 remains of Micaela.
4
5 1. Specifically, the clothing from Micaela's upper body had been
6 removed therefrom.
7
8 c. That Micaela had trapped between her right arm and her torso a grey
9 sweatshirt; and
10
11 d. That there was around her right forearm two of what are commonly called
12 "zip-ties", plastic binding devices, which were connected together end-to-
13 end to form a circle.
14
15 1. Additionally on each of her wrists there were what appeared to be
16 the end of the sleeves of a sweatshirt.
17
18 e. That, after being fully excavated, Micaela's remains were placed in a
19 body bag for transportation to the Washoe County Coroner's Office;
20
21 f. That Ms. Armstrong attended the Autopsy of Micaela's remains
22 conducted on or about the 8th of March, 2011, at the Washoe County
23 Coroner's Office in Reno, Nevada; and
24
25 g. When the sweatshirt trapped between Micaela's right arm and
26 her torso was removed therefrom and examined, it was discovered
27 that:
28 1. The sleeves of the sweatshirt were in a knot; and

1 2. The end of the sleeves had been cut or severed from the
2 sweatshirt, which were, as noted above, still upon Micaela's
3 wrists at the time her remains were recovered at the site some
4 five miles west of West Wendover, Nevada as described above.

5
6 h. That the zip-ties that were around Micaela's forearm were recovered and
7 preserved as well.

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9 9. The Testimony Of Dr. Ellen Clark:

10 That:

11 a. She is a certified forensic pathologist and that she performed an autopsy
12 upon the remains of Micaela on or about the 8th day of March, 2011;

13 b. That, after conducting her examination of Micaela's remains, she
14 concluded that Micaela died as a result of:

15 1. Exsanguination due to multiple stab and slash wounds of her face
16 and neck and that she had suffered blunt force trauma and
17 asphyxia injury: and

18 2. That these injuries included:

19 a. As noted above, multiple stab and slash wounds of her face
20 and neck, and the exanguination/hemorrhage associated
21 with said stab and slash wounds;

22 b. That Micaela suffered a stab wound on the right side of
23 her neck that transected her right jugular vein;
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- 1 c. Sharp force injuries to her head, and larynx and thyroid
2 cartilage;
3
4 d. That a number of the slash and stab wounds were consistent
5 with the use of a knife to inflict those injuries; and
6
7 d. Micaela also suffered blunt force trauma to her head, face
8 and back;
- 9 3. That upon examination of the entrenching tool recovered by Det.
10 Burnum, see supra, Dr. Clark found the serrated edge of the
11 shovel blade of the entrenching tool to be consistent with some, or
12 at least one, "patterned" slashing injury or injuries on Micaela's
13 neck which has a "scalloped" feature to the wound(s); and
14
15 4. That Micaela had evidence of blunt force trauma to her upper back
16 or shoulder which was consistent with being struck with the flat of a
17 shovel.
18

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20 10. The Testimony Of Kip Patten:

21 That:

- 22 a. On the 16th day of April, 2011, Toni Collette Fratto made a statement to
23 one Kip Patten wherein she asserted that she had been present at the
24 killing of, and participated in the killing of, Micaela with Kody Cree Patten;
25
26 b. Specifically that:
27 Toni Collette Fratto accompanied Kip Patten to the crime scene some
28

1 five miles west of the City of West Wendover, Nevada where Ms. Fratto
2 asserted that the following had occurred:

- 3
- 4 1. That she (Toni Collette Fratto), Kody Cree Patten, and Micaela
5 arrived at the crime scene west of West Wendover, Nevada in
6 Wendi Murphy's Trailblazer;
- 7
- 8 2. That Kody Cree Patten got out of the vehicle, leaving Toni Collette
9 Fratto and Micaela in the vehicle, and started digging a hole;
- 10
- 11 3. That, thereafter, Toni Collette Fratto and Micaela got out of the
12 vehicle, and that shortly thereafter, after an exchange of words
13 between she (Toni Collette Fratto) and Micaela, Toni Collette
14 Fratto struck Micaela in the back with a shovel;
- 15
- 16 4. That Micaela fell to the ground when she was struck with the
17 shovel and she (Toni Collette Fratto) and Kody Cree Patten
18 commenced hitting and kicking Micaela;
- 19
- 20 5. That while they were engaged in hitting and striking her, a train
21 came down the nearby tracks and she (Toni Collette Fratto) and
22 Kody Cree Patten moved Micaela behind the vehicle;
- 23
- 24 6. That after the train has passed the location, Toni Collette Fratto
25 and Kody Cree Patten drug Micaela to the hole Kody Cree Patten
26 had dug where she (Toni Collette Fratto) and Kody Cree Patten
27 held Micaela down, and both she (Toni Collette Fratto) and Kody
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1 Cree Patten personally participated in cutting Micaela's throat, and
2 stabbing Micaela, after which Micaela's body was covered with dirt.

3
4 7. While at this location, Toni Collette Fratto pointed out to Kip Patten
5 on the ground the specific area where Micaela had been killed;

6 8. That after Micaela had been killed, she (Toni Collette Fratto) and
7 Kody Cree Patten gathered Micaela's backpack, key lanyard, cell
8 phone and her shirt and took these items, along with a knife, to a
9 gravel pit in Utah near West Wendover, Nevada where these items
10 were either burned or thrown out along the roadway.

11
12
13 c. That the entrenching tool recovered by Det. Burnum was Kody Cree
14 Patten's or that Kody Cree Patten had one just like it, because he, Kip
15 Patten, had given it to him, and that Kody Cree Patten, who is Kip
16 Patten's son, did own several folding knives.

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18 11. The Testimony Of John Ohlson And Jeffrey Kump:

19 That:

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21 a. On the 22nd day of April, 2011, Toni Collette Fratto was transported to the
22 Law Offices of Jeffrey Kump in Elko, Nevada by Kip Patten;

23 b. That, while there, Toni Collette Fratto participated in a tape recorded
24 interview of her conducted by Mr. John Ohlson and Mr. Kump during the
25 course of which she related that:

26
27 1. On the 3rd day of March, 2011, after school she had first gone
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1 home – that is to her parents, Claude and Cassie Fratto's
2 residence;

3
4 2. That at approximately 5:20 p.m. she (Toni Collette Fratto), her
5 mother Cassie Fratto, and her father, Claude Fratto had left the
6 family residence to take Claude to a meeting, and then she and her
7 mother Cassie had proceeded to a meeting of the local
8
9 Recreational Board in which her mother was participating;

10 3. While Toni Collette Fratto was at the meeting, she had received a
11 text message from Kody Cree Patten wherein he advised that he
12 (Kody Cree Patten) had Micaela with him, but he wanted her (Toni
13 Collette Fratto) to come with him;

14
15 4. That thereafter Kody Cree Patten picked her (Toni Collette Fratto)
16 up from the meeting she was attending; and thereafter she (Toni
17 Collette Fratto), Micaela, and Kody Cree Patten proceeded directly
18 to the "gravel pit" where Micaela was ultimately killed;

19
20
21 a. Toni Collette Fratto also described she, Micaela and Kody
22 Cree Patten driving around in the desert at one point during
23 her April 22nd, 2011, conversation with Mr. Ohlson and Mr.
24 Kump;

25
26 b. In any event, Toni Collette Fratto further asserted that there
27 was some conversation between she (Toni Collette Fratto),
28

1 Kody Cree Patten, and Micaela concerning Micaela's alleged
2 desire to re-commence a romantic relationship with Kody
3 Cree Patten they (Kody Cree Patten and Micaela) had had
4 at some point in the past while in route to the gravel pits,
5 and that the circumstance was described by her (Toni
6 Collette Fratto) as tense".

- 7
8
- 9 5. That at one point, Micaela demanded to be let out of the vehicle,
10 and that in response thereto, Kody Cree Patten stopped the
11 vehicle and Micaela got out and Kody Cree Patten did as well;
12
- 13 6. She (Toni Collette Fratto) observed an argument ensue between
14 Micaela and Kody Cree Patten which involved pushing and she
15 heard a loud thump whereupon she (Toni Collette Fratto) got out
16 of the vehicle to see what had happened;
17
- 18 7. That she observed Micaela on the ground.
19
20 a. Upon her (Toni Collette Fratto's) inquiry of him Kody Cree
21 Patten asserted that he had pushed Micaela who had fallen
22 and struck her (Micaela's) head on the vehicle.
23
- 24 8. That when they, Toni Collette Fratto and Kody Cree Patten,
25 checked Micaela she was not responsive; they, Toni Collette Fratto
26 and Kody Cree Patten, panicked at which point Kody Cree Patten
27 commenced digging a hole;
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9. At some point she (Toni Collette Fratto) and Kody Cree Patten commenced hitting and kicking Micaela upon her body and face, during which time Micaela was trying to get up;

10. That she (Toni Collette Fratto) then took the shovel and struck Micaela in the back behind her shoulder;

11. At that point, she (Toni Collette Fratto) and Kody Cree Patten moved Micaela into the grave Kody Cree Patten had dug and then they (Toni Collette Fratto and Kody Cree Patten) both "slit her throat" -- referring to Micaela -- with a knife that Kody Cree Patten had with him;

12. That then they (Toni Collette Fratto and Kody Cree Patten) buried Micaela;

13. That they (Toni Collette Fratto and Kody Cree Patten) took a bag of Micaela's belongings and burned them, and then went to McDonalds.

c. That it was Kody Cree Patten who removed Micaela's shirt by cutting it off of her -- which may have occurred when they (Toni Collette Fratto and Kody Cree Patten) were beating and/or kicking Micaela.

12. The Testimony Of Suzanne Harmon And Stephen Gresko:

That:

a. Suzanne Harmon, a Criminalist employed by the Washoe County Crime

1 Lab, on the 17th of June, 2011, conducted a forensic examination of
2 a number of items of physical evidence collected in connection with the
3 investigation of this matter, amongst them the sweatshirt recovered from
4 Micaela's remains;
5

- 6 1. That the purpose of her examination was to collect samples from
7 the evidence for later DNA examination;
8
- 9 2. That one of the samples she collected was a swab from the inside
10 of the knotted sleeves of the aforementioned sweatshirt which she
11 ultimately marked and identified for later identification as swab "C3"
12 which she later re-entered into the Lab's evidence system for later
13 DNA Analysis by one of the DNA Analysts employed by the Lab;
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15
16 b. That thereafter Stephen Gresko, a DNA Analyst employed by the Lab,
17 withdrew, amongst other things, Swab "C3" from the Lab's evidence vault
18 and when he when he analyzed "C3" and compared it against the known
19 DNA Samples recovered from Kody Cree Patten he determined that Y
20 STR DNA analysis of "C3", the swab collected by Suzanne Harmon from
21 the inside of the knotted sleeves of the aforementioned sweatshirt, was
22 determined to:
23

- 24 a. Contain a partial dominant Y DNA profile, which profile matched
25 Kody Cree Patten's Y DNA sample reflected in Kody Cree
26 Patten's DNA reference sample, from which Mr. Gresko concluded
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that:

- 1. "Kody Cree Patten or any of his male paternal biological relatives cannot be excluded as the source of the partial DNA from C3 sweatshirt swabs. Based upon the US Y-STR Database, the frequency of this matching DNA pattern is approximately 1 in 676 males in the Caucasian population, 1 in 936 miles in the African American population, and 1 in 561 males in the Hispanic population".

The above represents a recitation of the testimony and evidence upon which the State would be relying in its pursuit of the imposition of the penalty of death in the event that Toni Collette Fratto is convicted of First Degree Murder, a Felony under either of the theories of that offense with which she is currently charged.

Further the State would allege and aver, as described above, that there is clear evidence, as summarized above, from which it can be inferred, beyond a reasonable doubt, that Micaela Costanzo was killed during the perpetration of a first degree kidnapping of her person and/or that the Defendant, Toni Collette Fratto, knew or had reason to know that lethal force would be employed during the perpetration of said kidnapping.

Reservation Of The Right To Supplement This Notice

In filing this pleading the State would seek to reserve the right to supplement this Notice should further evidence, which the State is not now aware of,

1 come to light -- such as further forensic evidence, which would further support this
2 Notice, should the Court permit the same (See Supreme Court Rule 250.4(d)).
3

4 Dated this 27th day of August, 2011.

5 

6 **MARK TORVINEN**
7 State Bar Number: 551
8 Elko County District Attorney

9
10 **CERTIFICATE OF SERVICE**

11 I, Karen Cracraft, hereby certify that I am an employee of the Elko County
12 District Attorney's Office, and that on the 24th day of August, 2011, a true and
13 correct copy (or true and correct copies in the case of multiple addressees) of the
14 foregoing;
15

16 THE STATE OF NEVADA'S:

17 1. NOTICE PURSUANT TO THE PROVISIONS OF SUPREME COURT
18 RULE 250 OF THE STATE'S INTENT, IN THE EVENT THAT THE
19 DEFENDANT TONI COLLETTE FRATTO IS CONVICTED OF FIRST
20 DEGREE MURDER, TO SEEK THE IMPOSITION OF THE PENALTY
21 OF DEATH; AND

22 2. CERTIFICATE OF SERVICE WITH RESPECT THERETO;

23 was/were served upon the addressee(s) identified hereafter in the following manner:

24 That a copy was delivered to the Chambers of the above-entitled Court at
25 the following address:

26 District Court – Dept. II
27 Elko County Court House
28 Elko, Nevada. 89801

1 Pursuant to the provisions of NRS 178.589², a true and correct copy of
2 this pleading was transmitted by facsimile to the following individuals at the following
3 facsimile numbers:
4

- 5 1. Mr. John Ohlson via facsimile number: 775-323-2705;
- 6 2. Mr. Jeffrey Kump via facsimile number: 738-0187;

7
8 ² NRS 178.589 provides that:

9 1. Except when personal service of a person is ordered by the court or required by
10 specific statute, a person who is represented by an attorney may be lawfully served
11 with any motion, notice or other legal document by means of a facsimile machine if:

12 (a) The document is transmitted to the office of the attorney representing the person;
13 and

14 (b) The facsimile machine is operational and is maintained by the attorney
15 representing the person or the employer of that attorney.

16 2. In addition to any other document required by the court, a person who uses a
17 facsimile machine pursuant to subsection 1 to serve any motion, notice or other legal
18 document that is required to be filed with the court shall attach to or include with the
19 original document filed with the court a copy of the confirmation report or other
20 comparable evidence of the transmittal of the legal document.

21 3. Service of any motion, notice or other legal document by facsimile machine after 5
22 p.m. on the day that the document is transmitted shall be deemed delivered on the
23 next judicial day. The time of transmittal set forth in this subsection is determined
24 according to the time at the location of the recipient of the legal document.

25 4. Service of any motion, notice or other legal document by facsimile machine as
26 authorized by this section is supplemental to and does not affect the validity of any
27 other manner of service authorized by law.

28 5. As used in this section:

(a) "Facsimile machine" means a device that sends or receives a reproduction or
facsimile of a document or photograph which is transmitted electronically or
telephonically by telecommunications lines.

(b) "Person" includes, without limitation, a government, governmental agency or
political subdivision of a government.

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3. Mr. John P. Springgate via facsimile number: 775-323-3869; and

4. Lockie And Macfarlan via facsimile number: 738-1928;

proof of the transmission of which is attached to the original of this pleading filed with the Court.

Finally that a hard copy of this pleading was mailed by first class mail, postage pre-paid, to the Defendant's Counsel Of Record at the following addresses:

Mr. John P. Springgate
203 South Arlington Avenue
Reno, Nevada 89501-1702

And

Mr. David B. Lockie
Lockie & Macfarlan
919 Idaho Street
Elko, Nevada 89801

Karen Cracraft
KAREN CRACRAFT
Administrative Caseworker